

Assembly Bill No. 2778

CHAPTER 347

An act to amend Sections 1749.01 and 10506 of the Insurance Code, relating to insurance.

[Approved by Governor August 31, 2002. Filed with
Secretary of State September 3, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2778, Calderon. Insurance.

(1) Existing law provides for the regulation of insurers by the Insurance Commissioner. Existing law requires licensed life agents and applicants for licensure as a life agent to meet certain education standards unless they are limited by the terms of a written agreement with an insurer to transact only specified life insurance policies or annuities having an initial face value of \$10,000 or less that are designated by the purchaser for the payment of funeral and burial expenses.

This bill would instead require that the face value of those life insurance policies and annuities be \$15,000 or less.

(2) Existing law prohibits the issuance by an insurer of contracts for variable life insurance benefits until a showing has been made to the commissioner indicating that the insurer's condition or method of operation in connection with the contracts is not hazardous to the public or the insurer's policyholders.

This bill would require an insurer to notify the commissioner at any time it implements a material change to mutual funds underlying the variable contract separate account in a policy or contract providing for variable life insurance benefits but would authorize an insurer to make those changes without the commissioner's prior approval or acknowledgment.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature that insurers authorized to issue policies and contracts providing variable benefits be permitted to implement changes to the mutual funds underlying variable contract separate accounts without being subject to the Insurance Commissioner's approval or acknowledgment prior to implementation.

SEC. 2. Section 1749.01 of the Insurance Code is amended to read:

1749.01. Sections 1749 and 1749.3 shall not apply to a life agent who is limited by the terms of a written agreement with the insurer, which filed on that life agent's behalf a notice of appointment with the commissioner, to transact only specific life insurance policies or annuities having an initial face amount of fifteen thousand dollars (\$15,000) or less that are designated by the purchaser for the payment of funeral and burial expenses. The commissioner may require the insurer appointing those life agents to certify as to the limitations of the agents' representation.

SEC. 3. Section 10506 of the Insurance Code is amended to read:

10506. (a) Any domestic life insurance company may, after adoption of a resolution by its board of directors, allocate to one or more separate accounts, in accordance with the terms of a written agreement, any amounts which are paid to the company in connection with a pension, retirement, retirement medical benefits, or profit-sharing plan, or program for one or more persons, or with an individual or group variable life insurance policy, and which are to be, or may be, applied in payment or in making provision for payment of proceeds or benefits under the company's policies, contracts, or agreements of retirement benefits, and other benefits incidental thereto, in fixed or variable dollar amounts, or both. The income, if any, and gains or losses, realized or unrealized, on each account shall be credited to or charged against the amount allocated to the account in accordance with the agreement, without regard to the other income, gains or losses of the company. The amounts allocated to the accounts and accumulations thereon, by any life insurance company shall be invested and reinvested as specified in the policy, contract, or agreement without regard to any requirements or limitations prescribed by the laws of this state governing the investments of insurance companies, provided that the amounts allocated to separate accounts for which the insurer has issued guarantees of benefits as to dollar amount and duration or of funds as to all or part of the principal amount thereof or stated rate of interest, and the accumulations thereon pursuant to Section 10506.4, shall be invested in the types of investments permitted to life insurance companies for investments held in the insurer's general account as described in Article 3 (commencing with Section 1170), Article 4 (commencing with Section 1190), and Article 4.6 (commencing with Section 1211) of Chapter 2 of Part 2 of Division 1 (excluding Section 1212 thereof), except that the approved method of operations and applicable policy, contract, or agreement provisions shall govern the amount of these investments held in the separate account. However, with regard to variable life insurance separate accounts and accumulations thereon, the separate accounts shall have sufficient net investment income and readily marketable assets to



meet anticipated obligations under policies funded by the account. The limitations contained in Sections 1192.4 and 1198 are not applicable to these investments. These investments shall not be included in determining the propriety of other investments of the company. The liability of the company with respect thereto, but only to the extent prescribed in the agreement, shall be shown on the statement of the company in the manner prescribed by the commissioner. Amounts allocated by an insurance company to separate accounts in the exercise of the power granted by this section shall be owned by the company, but shall not be chargeable with liabilities arising out of any other business the company may conduct except and to the extent provided in the policy, contract, or agreement. The company shall not hold itself out to be a trustee in respect to these amounts.

(b) In addition to amounts otherwise allocated to separate accounts, a domestic life insurer may allocate to the account or accounts amounts which otherwise would be subject to investment in accordance with Article 4 (commencing with Section 1190) of Chapter 2 of Part 2 of Division 1. The aggregate of these additional amounts shall not, however, exceed 1 percent of its admitted assets as of the preceding December 31, or 5 percent of the excess of its admitted assets over its liabilities and required reserves as of the preceding December 31, whichever is the smaller. The company shall be entitled to withdraw at any time, in whole or in part, its participation in any separate account to which funds have been allocated as provided in this subdivision and to receive, upon withdrawal, its proportionate share of the value of the assets of the separate account at the time of withdrawal.

(c) In addition to the allocations to separate accounts provided for in subdivision (a), a domestic insurer may, at the request of a policyholder or contractholder or the beneficiary of a policy or contract, allocate to any separate account or accounts, death payments, proceeds of matured endowments, dividends, or surrender values.

(d) Except as otherwise provided in Section 10506.4, or with the approval of the commissioner, and under conditions as to investments and other matters as he or she may prescribe, which shall recognize the guaranteed nature of the benefits provided, reserves for (1) benefits guaranteed as to dollar amount and duration and (2) funds guaranteed as to principal amount or stated rate of interest shall not be maintained in a separate account that, as provided under applicable policy, contract, or agreement, is or is not chargeable with liabilities arising out of any other business the company may conduct.

(e) Unless otherwise approved by the commissioner, assets allocated to a separate account shall be valued at their market value, or at amortized cost if it approximates market value within the limits and



constraints imposed by the United States Securities and Exchange Commission, on the date of valuation, or, if there is no readily available market, then as provided under the terms of the contract or the rules or other written agreement applicable to the separate account. Unless otherwise approved by the commissioner, the portion of any of the assets of the separate account equal to the company's reserve liability, with regard to the guaranteed benefits and funds referred to in subdivision (d), shall be valued in accordance with the rules otherwise applicable to the company's assets.

(f) (1) Except as provided in paragraph (2) of subdivision (f), a sale, exchange, or other transfer of assets may not be made by a company between any of its separate accounts, or between any other of its investment accounts and one or more of its separate accounts unless, in case of a transfer into a separate account, the transfer is made solely to establish the account or to support the operation of the contracts with respect to the separate account to which the transfer is made, and unless the transfer, whether into or from a separate account is made (1) by a transfer of cash, or (2) by a transfer of securities having a readily determinable market value, and the transfer of securities is approved by the commissioner. The commissioner may approve other transfers among the accounts if, in his or her opinion, the transfer would not be inequitable.

(2) Transfers from an insurer's general account to one or more of its separate accounts to establish and maintain reserves for the guarantees authorized by Section 10506.4 shall only be made in cash in accordance with methods of operations approved pursuant to subdivision (c) of Section 10506.4. A transfer shall not operate to increase the amounts permitted to be allocated by an insurer to the separate accounts pursuant to this subdivision or by subdivision (b) of Section 10506, and the provisions of that subdivision shall not limit these transfers.

(g) Any domestic life insurance company which establishes one or more separate accounts pursuant to this section may provide for special voting rights and procedures for participants in the separate account relating to investment policy, investment advisory services, and selection of certified public accountants in relation to the administration of the assets in any separate account. The voting rights shall be in addition to, and shall not affect, voting rights of mutual insurers.

(h) The purpose and intent of this section is to permit the issuance and delivery of policies or contracts, in connection with a pension, retirement, retirement medical benefits, or profit-sharing plan, or program for one or more persons, or policies of variable life insurance, providing for the payment of benefits in fixed or variable amounts, or both, and the establishment of separate accounts by domestic companies



for the administration of and investments under these agreements. To protect the public and policyholders located in this state from hazardous operation by domestic and foreign companies, and to further the purpose and provision of this section, no domestic or foreign life insurance company shall undertake the issuance of any contract providing for variable benefits until the company has satisfied the commissioner that its condition or method of operation in connection with the issuance of these contracts shall not be such as would render its operation hazardous to the public or its policyholders in this state and, in the case of a foreign or alien insurer, that it meets the conditions prescribed in Section 716, for the issuance of a certificate of authority. In determining the qualification of a company requesting authority to issue contracts providing for variable benefits within this state, the commissioner shall consider among other things, (1) the history of the company; (2) the character, responsibility, and general fitness of the officers and directors of the company; (3) the regulation of a foreign company by its state of domicile; (4) the adequacy of the investment management which the company is providing; and (5) the company's arrangements for the supervision of the marketing of the contracts. Subsequent to an insurer initially satisfying the commissioner that its condition or method of operation would not render its operation hazardous to the public or its policyholders, the insurer shall notify the commissioner at any time it implements a material change respecting the mutual funds underlying the variable contract separate account available or to be available with a policy or contract providing variable benefits. The notification shall prominently disclose the sales charges, management and other fees payable to the insurer under the contract, and whether one or more of the mutual funds underlying the variable contract separate account are issued by an affiliated company and the names of those mutual funds. The notification shall be accompanied by a certification signed by an executive officer having responsibility for contracts providing variable benefits stating that the change complies with relevant statutes and regulations. The commissioner may review the notification to ensure the continued qualification of the insurer to issue and deliver those policies and contracts. The commissioner may make reasonable rules and regulations as he or she considers necessary, proper, and advisable concerning the issuance and delivery of these policies and contracts and the payment of benefits thereunder and the manner in which the separate accounts shall be administered and which types of policies and contracts, if any, shall be subject to his or her approval prior to issue. Notification of any material change shall not be subject to the commissioner's approval or acknowledgment prior to implementation. The commissioner shall promulgate on an emergency basis, and in



accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), a regulation superseding Insurance Department Bulletin 97-2 that shall become effective January 1, 2003. Until promulgation of the regulation, the commissioner and insurers may continue to rely upon Insurance Department Bulletin 97-2, except that the commissioner's approval or acknowledgment prior to implementation of a change to a mutual fund underlying a variable contract separate account shall not be required on or after January 1, 2003.

However, no company may provide variable benefits in its contracts unless it is an admitted insurer having and maintaining a combined capital and surplus of at least ten million dollars (\$10,000,000).

For purposes of this section, "affiliated company" has the same meaning given in paragraph (1) of subsection (g) of Section 6701 of Title 15 of the United States Code.

(i) (1) Any contract providing benefits payable in variable amounts delivered or issued for delivery in this state on or after the effective date of the amendments to this section enacted at the 1971 Regular Session of the Legislature shall contain a statement of the essential features of the procedures to be followed by an insurance company in determining the dollar amount of these variable benefits. Any contract under which the benefits vary to reflect investment experience, including a group contract and any certificate in evidence of variable benefits issued thereunder, shall state that the dollar amount shall so vary, and shall contain on its first page a statement to the effect that the benefits thereunder are on a variable basis. Except for Article 3a (commencing with Section 10159.1) of Chapter 1 of Part 2 of Division 2, in the case of a variable life insurance policy, and except as otherwise provided in this section, all pertinent provisions of this code shall apply to separate accounts and contracts relating thereto. Any variable life insurance contract, delivered or issued for delivery in this state on or after the effective date of the amendments to this section enacted at the 1992 Regular Session of the Legislature, shall contain such nonforfeiture provisions as are appropriate to such a contract.

(2) The reserve liability for variable contracts shall be established in accordance with actuarial procedures that recognize the variable nature of the benefits provided and any mortality guarantees.

(j) No insurer shall issue anywhere any group variable life insurance policy for which the master contractholder or any covered party is an individual residing in this state or is a corporation, association, trust, or other legal entity that is either domiciled in or has its principal place of business in this state, unless the insurer has become qualified to issue



variable life insurance policies and its group master policy form together with all forms of certificates or notices thereunder have been approved by the commissioner. Group variable life insurance policies shall be issued only to groups referred to in Chapter 2 (commencing with Section 10200) of Part 2 of Division 2.

O

